

108TH CONGRESS  
2D SESSION

# H. R. 4600

To amend section 227 of the Communications Act of 1934 to clarify the prohibition on junk fax transmissions.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2004

Mr. UPTON (for himself, Mr. MARKEY, Mr. BARTON of Texas, Mr. DINGELL, Mr. BOUCHER, Mr. TERRY, Mr. TOWNS, Mr. JOHN, Mr. ENGEL, Mr. ROGERS of Michigan, Mr. BUYER, Mrs. CAPPS, Mr. WYNN, Mr. GORDON, Mr. GILLMOR, Mr. GREEN of Texas, Mrs. BONO, Ms. SCHAKOWSKY, Mr. STEARNS, Mr. PICKERING, Mr. DAVIS of Florida, Mr. BURR, Mr. SHIMKUS, and Mr. GONZALEZ) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend section 227 of the Communications Act of 1934 to clarify the prohibition on junk fax transmissions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Junk Fax Prevention  
5       Act of 2004”.

1 **SEC. 2. PROHIBITION ON FAX TRANSMISSIONS CONTAINING**  
2 **UNSOLICITED ADVERTISEMENTS.**

3 (a) PROHIBITION.—Subparagraph (C) of section  
4 227(b)(1) of the Communications Act of 1934 (47 U.S.C.  
5 227(b)(1)(C)) is amended to read as follows:

6 “(C) to use any telephone facsimile ma-  
7 chine, computer, or other device to send, to a  
8 telephone facsimile machine, an unsolicited ad-  
9 vertisement—

10 “(i) to a person who has made a re-  
11 quest to such sender that complies with  
12 the requirements under paragraph (2)(D),  
13 not to send future unsolicited advertise-  
14 ments to a telephone facsimile machine; or

15 “(ii) to a person not described in  
16 clause (i), unless—

17 “(I) the sender has an estab-  
18 lished business relationship (which  
19 term, for purposes of this subclause,  
20 shall have the meaning given the term  
21 in section 64.1200 of the Commis-  
22 sion’s regulations, as in effect on Jan-  
23 uary 1, 2003, except that such term  
24 shall include a relationship between a  
25 person or entity and a business sub-  
26 scriber subject to the same terms ap-

1 plicable under such section to a rela-  
2 tionship between a person or entity  
3 and a residential subscriber) with  
4 such person; and

5 “(II) the unsolicited advertise-  
6 ment contains a conspicuous notice on  
7 the first page of the unsolicited adver-  
8 tisement that—

9 “(aa) states that the recipi-  
10 ent may make a request to the  
11 sender of the unsolicited adver-  
12 tisement not to send any future  
13 unsolicited advertisements to  
14 such telephone facsimile machine  
15 and that failure to comply, within  
16 the shortest reasonable time, as  
17 determined by the Commission,  
18 with such a request meeting the  
19 requirements under paragraph  
20 (2)(D) is unlawful;

21 “(bb) sets forth the require-  
22 ments for a request under para-  
23 graph (2)(D); and

24 “(cc) includes a domestic  
25 contact telephone and facsimile

1 number for the recipient to  
2 transmit such a request to the  
3 sender, neither of which may be  
4 a number for a pay-per-call serv-  
5 ice (as such term is defined in  
6 section 228(i)); any number sup-  
7 plied shall permit an individual  
8 or business to make a do-not-fax  
9 request during regular business  
10 hours; or”.

11 (b) REQUEST TO OPT-OUT OF FUTURE UNSOLIC-  
12 ITED ADVERTISEMENTS.—Paragraph (2) of section  
13 227(b) of the Communications Act of 1934 (47 U.S.C.  
14 227(b)(2)) is amended—

15 (1) in subparagraph (B), by striking “and” at  
16 the end;

17 (2) in subparagraph (C), by striking the period  
18 at the end and inserting a semicolon; and

19 (3) by adding at the end the following new sub-  
20 paragraphs:

21 “(D) shall provide, by rule, that a request  
22 not to send future unsolicited advertisements to  
23 a telephone facsimile machine complies with the  
24 requirements under this subparagraph only if—

1 “(i) the request identifies the tele-  
2 phone number of the telephone facsimile  
3 machine to which the request relates;

4 “(ii) the request is made to the tele-  
5 phone or facsimile number of the sender of  
6 such an unsolicited advertisement provided  
7 pursuant to paragraph (1)(C)(ii)(II)(cc) or  
8 by any other method of communication as  
9 determined by the Commission; and

10 “(iii) the person making the request  
11 has not, subsequent to such request, pro-  
12 vided express invitation or permission to  
13 the sender, in writing or otherwise, to send  
14 such advertisements to such person at such  
15 telephone facsimile machine; and

16 “(E) may, in the discretion of the Commis-  
17 sion and subject to such conditions as the Com-  
18 mission may prescribe, allow professional trade  
19 associations that are tax-exempt nonprofit orga-  
20 nizations to send unsolicited advertisements to  
21 their members in furtherance of the associa-  
22 tion’s tax-exempt purpose that do not contain  
23 the notice required by paragraph (1)(C)(ii)(II),  
24 except that the Commission may take action  
25 under this subparagraph only by regulation

1           issued after notice and opportunity for public  
 2           comment in accordance with section 553 of title  
 3           5, United States Code, and only if the Commis-  
 4           sion determines that such notice is not nec-  
 5           essary to protect the right of the members of  
 6           such trade associations to make a request to  
 7           their trade associations not to send any future  
 8           unsolicited advertisements.”.

9           (c) UNSOLICITED ADVERTISEMENT.—Paragraph (4)  
 10          of section 227(a) of the Communications Act of 1934 (47  
 11          U.S.C. 227(a)(4)) is amended by inserting “, in writing  
 12          or otherwise” before the period at the end.

13          (d) REGULATIONS.—Not later than 270 days after  
 14          the date of the enactment of this Act, the Federal Commu-  
 15          nications Commission shall issue regulations to implement  
 16          the amendments made by this section.

17       **SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX EN-**  
 18       **FORCEMENT.**

19          Section 227 of the Communications Act of 1934 (47  
 20          U. S.C. 227) is amended by adding at the end the fol-  
 21          lowing new subsection:

22          “(g) JUNK FAX ENFORCEMENT REPORT.—The Com-  
 23          mission shall submit a report to the Congress for each  
 24          year regarding the enforcement of the provisions of this  
 25          section relating to sending of unsolicited advertisements

1 to telephone facsimile machines, which shall include the  
2 following information:

3 “(1) The number of complaints received by the  
4 Commission during such year alleging that a con-  
5 sumer received an unsolicited advertisement via tele-  
6 phone facsimile machine in violation of the Commis-  
7 sion’s rules.

8 “(2) The number of such complaints received  
9 during the year on which the Commission has taken  
10 action.

11 “(3) The number of such complaints that re-  
12 main pending at the end of the year.

13 “(4) The number of citations issued by the  
14 Commission pursuant to section 503 during the year  
15 to enforce any law, regulation, or policy relating to  
16 sending of unsolicited advertisements to telephone  
17 facsimile machines.

18 “(5) The number of notices of apparent liability  
19 issued by the Commission pursuant to section 503  
20 during the year to enforce any law, regulation, or  
21 policy relating to sending of unsolicited advertise-  
22 ments to telephone facsimile machines.

23 “(6) For each such notice—

24 “(A) the amount of the proposed forfeiture  
25 penalty involved;

1           “(B) the person to whom the notice was  
2           issued;

3           “(C) the length of time between the date  
4           on which the complaint was filed and the date  
5           on which the notice was issued; and

6           “(D) the status of the proceeding.

7           “(7) The number of final orders imposing for-  
8           feiture penalties issued pursuant to section 503 dur-  
9           ing the year to enforce any law, regulation, or policy  
10          relating to sending of unsolicited advertisements to  
11          telephone facsimile machines.

12          “(8) For each such forfeiture order—

13               “(A) the amount of the penalty imposed by  
14               the order;

15               “(B) the person to whom the order was  
16               issued;

17               “(C) whether the forfeiture penalty has  
18               been paid; and

19               “(D) the amount paid.

20          “(9) For each case in which a person has failed  
21          to pay a forfeiture penalty imposed by such a final  
22          order, whether the Commission referred such matter  
23          to the Attorney General for recovery of the penalty.

24          “(10) For each case in which the Commission  
25          referred such an order to the Attorney General—

1           “(A) the number of days from the date the  
2           Commission issued such order to the date of  
3           such referral;

4           “(B) whether the Attorney General has  
5           commenced an action to recover the penalty,  
6           and if so, the number of days from the date the  
7           Commission referred such order to the Attorney  
8           General to the date of such commencement; and

9           “(C) whether the recovery action resulted  
10          in collection of any amount, and if so, the  
11          amount collected.”.

12 **SEC. 4. GAO STUDY OF JUNK FAX ENFORCEMENT.**

13          (a) IN GENERAL.—The Comptroller General of the  
14          United States shall conduct a study regarding complaints  
15          received by the Federal Communications Commission con-  
16          cerning unsolicited advertisements sent to telephone fac-  
17          simile machines, which shall determine—

18                 (1) the number and nature of such complaints;

19                 (2) the number of such complaints that result  
20          in final agency actions by the Commission;

21                 (3) the length of time taken by the Commission  
22          in responding to such complaints;

23                 (4) the mechanisms established by the Commis-  
24          sion to receive, investigate, and respond to such  
25          complaints;

1           (5) the level of enforcement success achieved by  
2           the Commission and the Attorney General regarding  
3           such complaints;

4           (6) whether complainants to the Commission  
5           are adequately informed by the Commission of the  
6           responses to their complaints; and

7           (7) whether additional enforcement measures  
8           are necessary to protect consumers, including rec-  
9           ommendations regarding such additional enforce-  
10          ment measures.

11          (b) **ADDITIONAL ENFORCEMENT REMEDIES.**—In  
12          conducting the analysis and making the recommendations  
13          required under paragraph (7) of subsection (a), the Comp-  
14          troller General shall specifically examine—

15               (1) the adequacy of existing statutory enforce-  
16               ment actions available to the Commission;

17               (2) the adequacy of existing statutory enforce-  
18               ment actions and remedies available to consumers;

19               (3) the impact of existing statutory enforcement  
20               remedies on senders of facsimiles;

21               (4) whether increasing the amount of financial  
22               penalties is warranted to achieve greater deterrent  
23               effect; and

24               (5) whether establishing penalties and enforce-  
25               ment actions for repeat violators or abusive viola-

1        tions similar to those established by section 4 of the  
2        CAN–SPAM Act of 2003 (15 U.S.C. 7703) would  
3        have a greater deterrent effect.

4        (c) REPORT.—Not later than 270 days after the date  
5        of the enactment of this Act, the Comptroller General shall  
6        submit a report on the results of the study under this sec-  
7        tion to Committee on Energy and Commerce of the House  
8        of Representatives and the Committee on Commerce,  
9        Science, and Transportation of the Senate.

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